July 23, 2015

STATE OF MAINE

SUPREME JUDICIAL COURT

sitting as the Law Court

DOCKET NO. OJ-15-2

CUMBERLAND COUNTY

INTERESTED PARTY BRIEF

Audrey Spence

68 Wolcott Street

Portland, Maine 04102

In Re: GOVERNOR'S REQUEST FOR OPINION OF THE JUSTICES

TABLE OF CONTENTS

TABLE OF APPENDIX EXHIBITS

INTRODUCTION

Now comes Audrey Spence, by and through Pro se representation and under Constitutional Right and protection of First Amendment Free Speech, including freedom from Prior Restraint in all creation, preparation, construction and manufacture of this Brief for the Court, in its overall total manner, form, content and use for expression of such to this Court; and Fourteenth Amendment Due Process of Law and Equal Protection under those Laws; with deep due respect of and to this, the Judicial Branch of the government of the State of Maine; notwithstanding, also, all gratitude and appreciation to that same such Judicial Branch for the invitation and opportunity extended to all such "Interested Parties", as myself, to be a part of and have input into such, as this Solemn Occasion, while henceforth being in all sincerity of hope, for recognition from this Court, of the manner of Good Faith extended to it, by me, and by way of my best attempt to fall within the requested parameters of the Court for the filing and acceptance of this Brief. That being also to the best of my knowledge, understanding and most especially abilities, at this time, including to that of resources, facility and the overcoming of Disability in areas and aspects where it might, but with no guarantee, occur; and in no way being of any kind

of defiance or disrespect or disregard if it does not occur for me to have reached the requested standard from the Court, I state the following:

ESTABLISHMENT OF STANDING

1. Standing for me being first and foremost to that of being a Citizen of the United States under Fourteenth Amendment Rights and protections of Due Process of Law and Equal Protection under the Laws, including to that of of Article III, section 2 of the US Constitution and Article VI, clause 2, both of which with inference to an implicit Constitutional theme being to that of the US Constitution being the supreme Law of the land, not necessarily in conjunction with, but actually and literally that being preemptively ahead of US (Federal) Law, State Law and State Constitutions, with also very specific and literal edict to "all" State Judges to be bound by just that. (see Appendix Exhibit 1, Texts of Implicit Constitutional Theme). And secondly, but no less importantly, also being of "resident" Citizenship of the State of Maine, Standing, in this instance here, for me, seems to be more to that of "Equity" than that of "only" matters of Law in that "emphasis" to the matters at hand is to that of being between "2 elected Branches" of Government and I being a member of that

electorate from which those 2 Branches hail, and not the other way around; while nevertheless, I, being directly affected and impacted by the decisions, actions and non-actions, alike, of just those 2 "elected" Branches of Government, the Executive and the Legislative, which through a Pro se representation would certainly seem to bring a not only unique Standing to the matters at hand, but also a much needed perspective of some of the direct affect and impact from a Layperson's point of view and perspective that the Court would otherwise never really know about or be in touch with, for itself, and in any kind of matter that would afford opportunity to just such a Layperson, as myself, and also as a member of that affected and impacted electorate to access the just as important, essential, and yet but still, separate 3rd Branch of Government, being that of the Judicial Branch. Again, "the power of the Judicial shall extend to all Cases of Law and 'Equity'.

NATURE OF THE CASE

2. From the Procedural Order from the Maine Supreme Judicial Court, DOCKET NO. OJ-15-2, (see Appendix Exhibit 2), invitation to Interested Parties is to first present an address to the questioning support of and for a "Solemn Occasion", or not. Furthering on in Appendix Exhibits 3 and 4 and for the sake of saving space, here,

within the limited number of pages of the body of this Brief for which I'm trying to be mindful of staying within as the requested parameters of such from the Court, I have included, for balance, the pertinent sections of 2 previous [Opinions of the Justices]; one in regard to the answering of a former Governor and the other in regard to the answering of members of a former Legislative session. Both of which having called upon the Justices for an opinion, as a "Solemn Occasion", and both of which being answered in the affirmative, as to acceptance of the request. And both also being answered in the affirmative of a Solemn Occasion being in that their responsibilities to the duty of their Offices were being held in such "of the moment" (legal limbo) questioning so as to not allow either of them to actionably proceed; even though the first, from the former Governor was not necessarily additionally based upon important questions of Law, while the other from the former Legislative session was, additionally, so held. To the best of my understanding in reading the inferences from those 2 previous opinions of the Justices, I attained and acquired no difference of perspective to this present call, from the present Governor, Paul R Lepage, for a needed and requested Solemn Occasion. (again, see Appendix Exhibits 3 and 4). And furthermore at this time, and in going back to my claim of Standing relative to being that of being a member

of the electorate and equitable argument to be presented more so than "only" as matters of Law regarded, I have nevertheless long believed that "important questions of Law" have been remiss in not only being answered of and to, but also in due process of such being upheld and followed by both Branches here today in the matter at hand, and presently before the Court.

ISSUES PRESENTED FOR REVIEW (3 Questions propounded)

3. Quickly returning to #1, above, "Standing" and #2 Procedural Order from the Maine Supreme Judicial Court (see Appendix Exhibit 2 as it asks specifically for "law regarding the Questions propounded"), I find it necessary at this point to reiterate my belief that my Standing goes more to that of "Equity" than to specifically "only Law", except for that of which Constitutional language, itself, would or could be considered "Law". That being said, the 3 questions propounded and taken from the main page of the Judicial Branch, under this particular DOCKET NO OJ-15-2 (see Appendix Exhibit 5), are as follows:

> a. What form of adjournment prevents the return of a bill to the Legislature
> as contemplated by the use of the word, adjournment, in Art. IV, pt. 3, §2 of the Maine Constitution?

answer (a): I believe the pertinent language in ART. IV, pt 3, sect 2 is that of ["except" on question of adjournment, which shall have passed both Houses]. Questioning in this matter arises on just that such pertinent language, 1) as the questioning is an "exception" to that adjournment and 2) that adjournment did pass both Houses. (see Appendix Exhibit 6 for full text of section 1 and 2, with emphasis added) That being as thus claimed, it is important, here, at this very point, to make the necessary switch from that of "adjournment" having been used like that of the cart being placed in front of the Horse to being placed back into its proper place behind the Horse, (Horses pull, they don't push). In this case, the word "except" is the Horse, and as still, the word "adjournment" remains as the Cart. Questioning here is to the placement of the Cart, (adjournment), and not whether or not it should be what it is, but whether or not "it is", what it is. "The Law", as State Constitutional language, at this time, clearly states, here, that there is an "Exception" (the Horse") and there is an "Adjournment" (the Cart). It is the duty and obligation of the Court to first decide the proper placement of the Cart, either in front of the Horse or behind it before then going on to decide the size of the Cart and the size of the Horse needed in order to pull it. (Again, already as a given, Horses pull carts, they don't push them). With the "Exception" as Horse already

necessarily being out in front of Adjournment as Cart, the US Supreme Court has already made a determination as to sizes of both and when if ever or not the Horse must pull the Cart in National Labor Relations Board v Noel Canning as it regards "Recess Appointments" and inter-session and intra-session adjournments. (see Appendix Exhibit 7, SCOTUS Ruling Quotes), with some quick excerpts, here:

* Founding-era dictionaries and usages show that the phrase "the recess" can encompass intra-session breaks

* The Senate is equally away and unavailable to participate in the appointments process during both an inter-session and an intra-session recess.

* In 1905, the Senate Judiciary Committee defined "the recess" as "the period of time when the Senate" is absent and cannot "participate as a body

It is my contention, here, that the Ruling in National Labor Relations Board v Noel Canning (and further on in answer to the next question, (b), that supports just such contentions that are being made, here, by me.

---

b. Did any of the action or inaction by the Legislature trigger the constitutional three-day procedure for the exercise of the Governor's veto?

answer (b): Yes. And by both, "action" and "inaction". Again, and in further referenced use to Art. IV, part 3rd, section 2 of the Maine Constitution (see Appendix Exhibit 6) and (Appendix Exhibit 7, SCOTUS Ruling Quotes), the answering of this particular question appears to be that of a compounded sixfold answer in that twofold, being to action 1) [The Adjournments Clause, Art. I, §5, cl. 4, reflects the fact that a 3-day break is not a significant interruption of legislative business.], but a 10 day or more break is and is an action taken; and 2) the action to take more than a 10 day break was deliberate by the naming of and making the Governor aware of the definate return date to be that of July 16th, instead of leaving it at "by call of the President of the Senate and Speaker of the House." Creating a time period of more than 10 days and needlessly setting a definative date of return that set into motion the only thing that the Governor had to go on and from, and especially under the already exceptional circumstances, was an action taken that triggered the Governor's only real and legitimate response being that of holding the Vetoes until the appropriate time, even though I believe that to have occurred was also blocked and prevented from happening, on the part of the Legislature. Twofold in "inaction" is to be found in and by way of pertinent Maine Constitutional language of 1) "which shall enter the objections at large on

its journals, [and proceed to reconsider it.]; and 2) [If after such reconsideration,]. Both of which being of "inaction", in failure to proceed to reconsider in less than 10 days, which after such not happening as the inaction that it was, inappropriately nullified the specific Constitutional language of ["if after such reconsideration"] as it occurred, but the Legislature now wishes to just nullify any considerations to any and all of that, too. Had those inactions not have occurred, this exigent need for Solemn Occasion and opinion from the Justices would not have occurred, either. And thirdly and lastly twofold again, for the making of this total sixfold demonstration for answering of the question, it is to that of being and going to both "action" and "non-action" of the Legisslature in more continued US Supreme Court language in the National Labor Relations Board v Noel Canning, as in (Appendix Exihibit 7) that 1) [But the narrower interpretation risks undermining constitutionally conferred powers more seriously and more often.], as in how the Legislature is trying to too narrowly define its actions and non-actions, as in this matter, and 2) and specifically in rebuttal of a publicized comment from the Speaker of the House regarding precedent and history (see Appendix Exhibit 8), [" In 1905, the Senate Judiciary Committee defined "the recess" as "the period of time when the Senate" is absent and cannot "participate as a body "].

Further stating in answer, and as in previous answer to (a), above, even though being of a compounded sixfold answer to the 2nd question of action and/or inaction or both, the one final answering can again be brought down to only a twofold conundrum, down from six. "Horse and Cart". "Process" (due) being the Horse and "Action" and/or "Inaction" being the Cart. And as already also established in (a), above, Horses pull the Cart, not push it and the placing of the Cart in front of the Horse prevents the Horse from properly being able to do and carry out its work (Job), as the case may be. Had the Legislature not placed their Carts of more than a 10 day Adjournment and that action that created and improperly sustained such and their Inactions resulting from such in front of the Horse (proper Process), the Governor would not have been prevented from returning the Vetoes to their Constitutionally proper and properly ordered forum for immediate "reconsideration", as called upon by the Maine Constitution to have happened, but did not.

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c. Are the 65 bills I returned to the Legislature on July 16 properly before that body for reconsideration?

answer (c): Given the rather lengthy and in depth answers to the best of my ability and understanding to questions (a) and (b), above, and in

calling on to utilize the believed to be proper writing form of "begging the question", my answer, here, to (c) and in conjunction with (a) and (b), above, has to be and cannot be other than "No".

RECAP OF ARGUMENT BEFORE SUMMATION

4. Recapping the argument begins with "Implicit Constitutional Themes" in that of separations of power that are not only in that of the Branches of Government, but to that also of the separation of power of the Government, as in its 3 Branches thereof, from that of the "Individual"; and including in what has already been iterated in such things as Article III, section 2 of the US Constitution and the power of the Judicial to extend to all Cases of Law and "Equity", as a part of my claim to standing being to just that in a claim of Standing, in this case, seeming to be more to that of Equity than to matters of Law, only; notwithstanding, also, the fact that any separation of power is still to remain as being "equal", as not also translating to be that of Equity, as in being "equitable", if not first and also, as a matter of Law or not. And while it is the job of the Legislature to "properly" limit but not diminish the power of the Executive from "equal", it is still nonetheless only appropriately so done within the proper bounds of Process, just like any one of us are boundaried by to accomplish, just the same. And

there is, for the Legislature's part, no better way to do the job of and for the People of limiting the power of the Executive than to be aware and know of and excercise proper procedure, (process), even if and when making "their own Rules"; and not to act only for and unto themselves as the collective of body that they are. But that job has not been carried out, even so especially over the most recent past 5 years, as the Legislature seems to have engaged in much "pick and choose" of what they want the process or the Laws or even the making of the Laws to be, rather than dealing with and utilizing process and Laws and the making of Laws for what they really are, instead. And it is no secret that too many are and have been thrown under the bus and just cast away when not also or otherly being kicked to the curb by this wrongly chosen "pick and choose" mentality of the Legislature's; and it has even graduated to the point of long stretches of being bandied about and led to believe one thing ending in last minute and secret negotiations and unknown about compromises being made out of the view and knowing of the Public, once it's too late and nothing else can be done and it has to be accepted, because there is no other choice. And these kinds of secret backroom negotiations and unknown about compromises also border on "collusion" of the Legislature to that of secretly and wrongly and wrongfully allowing, supporting and

advancing certain Citizens' Iniatives that should not even be of that particular process. (again, "pick and choose" and "selective enforcement") For far too long now, and even going back further than the past 5 years, too much emphasis and deference has been given to the Legislature in some kind of a continuous cycle of enactment, secret repeal, and reenactment before ever even allowing enforcement and the Force of Law to take place, and take a Rightful part. And regrettably in so many instances that seems also to go to that of "pick and choose" and "selective enforcement" mentality. I, as a member of the electorate have been directly affected and impacted by such constant and continuing cycles of "selective enforcement" and undue "substantial" deference being given to the Legislature; and at the expense of and because of the undue disrespect and disregard of and to the avenues of the Judicial, when also those very same avenues being purposefully blocked to not just myself, as Individual, but to many others, also. And it's as if it's done to keep all but the most resourced, including financial, even though not necessarily knowledgeable, Individuals in this constant state and cycle of being at the mercy, "only", of what the Legislature has in mind.....bandied about by Political will, might and muscle and kept from any "real" and meaningful and effective "individual" solutions to one's very own Life

and Personhood and being because one is being made to wait "only" for the Legislature to enact or reenact, instead. In my continuing "aside" studies it has been pointed out to me to learn that the Legislative determines which elements are required and the Judicial, "only", determines whether those elements are present. There is no need and certainly no propriety in this constant reliance on and running to the Legislature over and over again here in Maine with all expectation (and special interest) on them to be doing both, that of not only the Legislative, but the job of the Judicial; while also, at the same time, those very expectations and special interests being wrongly and wrongfully utilized to control the working budget of the very separate, but equal, Judicial Branch of the Government. For the past 5 years, Maine and Mainers and Myself have been Politically bandied about, harmed and abused and the Legislature has done nothing but either present itself as being helpless to do anything about it or remain "hidden" enough to have let it go on and continue....until one day just recently when "one of their own" had befallen just a taste of what the rest of many of us have been years-long experiencing and being forced to live with and under, and continuing still and worsening....but now there must be blowback from the Legislature because one of their own had been harmed? And sure enough, here

we have exactly what we have....the blowback from the Legislature, but only of and for and unto themselves, even though there are tens of thousands to that one of the "one of their own" who continue in needless harm and suffering because of the Legislature's failure to act on the less importance of not being "one of their own", but also that blowback now comes in this continued "out of order and out of Process (due), of its own and it's own making. Notice again that the "Individual" is still outside of the equation of that which decisions of will be affecting and impacting them, anyway? Except for this opportunity thus with the Judicial Branch to have this kind of limited and momentary input into this Solemn Occasion issue that seems only to be between the Legislative and the Executive Branches, even though really it is not; and really it is only because that is how it has been made out to be, and for way too long, now. And the Judicial Branch has and does play a very specific and not unlarge role in this continued undue "substantial" deference to the Legislature to enact and reenact instead of the Force of Law and to the Laws already present and in force to act.....but that is for another time and place, with only ending this recap, here, in stating that if the Legislature truly had the interests of the People, both collectively and individually, at the heart of their jobs and purpose, none of this, of this Solemn

Occasion, would ever have been allowed, or even worse still, been "created" to have happened.

SUMMATION

5. In just quickly going back up to immediately above in #4; and to reiterate, "It is the role of the Legislative to determine what elements are required and it is the role of the Judicial to determine if those elements are present." The US Supreme Court is of original jurisdiction just as much and to the same weight and level as the US Constitution, itself, is. When upon issues in State Constitution coming into or being of conflict or contradiction to the US Constitution and all provisions of such thereof, including "Federal" Law, the answer is already there; be that of strict scrutiny and edict that "all" State Judges be bound by that of the US Constitution, first, foremost and lastly "only", if it comes to that. The case, here, seems to me to present not only that kind of questioning that leads to an answering from a similar, but nevertheless, "implicit Constitutional theme" from the US Supreme Court in National Labor Relations Board v Noel Canning (see again Appendix Exhibit 7), but it also seems to lead to answering in the way of accountability to be that of a measuring weight; in this instance being to that of, say, the Legislature being 51% accountable and

responsible to that of the Executive Branch being 49%. It is my belief that the Laws in dispute are not properly "of Process" and as such, are not properly of enactment and legitimate force and should be returned to the Legislature for "reconsideration" after they have been again in session for at least 3 days and not unvailable by a length of 10 days or more to immediately transact Legislative Business and "proceed to reconsider" all Vetoes that were being held.

Respectfully submitted to the Court,

July 23, 2015

Audrey Spence

Appendix Exhibit 1

Texts of Implicit Constitutional Theme

US Constitution Article III sect 2

["The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and ....."]

US Constitution Article VI clause 2 (Supremacy Clause)

["This Constitution, and the Laws of the United States which shall be made in pursuance thereof;"].....["shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding."]

Appendix Exhibit 2

STATE OF MAINE

SUPREME JUDICIAL COURT DOCKET NO. OJ-15-2

In the Matter of
Request For Opinion of the Justices **PROCEDURAL ORDER**

On Friday, July 17, 2015, Governor Paul R. LePage referred three Questions to the Supreme Judicial Court, pursuant to article IV, part 3 of the Maine Constitution, related to the status of certain bills acted on during the 127th Maine Legislature.

The Justices hereby invite the Governor's Counsel, Counsel for the Maine Senate and House of Representatives, and any interested person or entity to submit briefs addressing

1. whether the Questions propounded present a " solemn occasion," pursuant to article VI, section 3 of the Maine Constitution; and

2. the law regarding the Questions propounded.

Appendix Exhibit 3

OPINION OF THE JUSTICES

OF THE SUPREME JUDICIAL COURT

GIVEN UNDER THE PROVISIONS OF SECTION 3

OF ARTICLE VI OF THE CONSTITUTION

Docket No. OJ 02-1

SOLEMN OCCASION

[¶4] The doctrine of separation of powers, expressly articulated at Article III of the Maine Constitution, would normally dictate that we decline to answer questions presented by the Governor or the Legislature regarding their respective authority. Me. Const. art. III, §§ 1-2; *Opinion of the Justices*, 396 A.2d 219, 223 (Me. 1979).

[¶5] A narrow exception to this fundamental principle is created by Article VI, Section 3, which provides: "The Justices of the Supreme Judicial Court shall be obliged to give their opinion upon important questions of law, and upon solemn occasions, when required by the Governor, Senate or House of Representatives." Thus, when we receive a request for an advisory opinion from either house of the Legislature or from the Governor, we first determine whether it is within the scope of our constitutional authority to provide advisory opinions only "upon important questions of law, and upon solemn occasions" pursuant to Article VI, Section 3 of the Maine Constitution. *Opinion of the Justices,* 682 A.2d 661, 663 (Me. 1996).

[¶6] The following guideposts assist our determination on whether a "solemn occasion" has been presented on an "important question[] of law." First, the matter must be of "live gravity," referring to the immediacy and seriousness of the question. *Opinion of the Justices*, 709 A.2d 1183, 1185 (Me. 1997). "A solemn occasion refers to an unusual exigency, such an exigency as exists when the body making the inquiry, having some action in view, has serious doubts as to its power and authority to take such action under the Constitution or under existing statutes." *Id.* In addition, the questions presented must be sufficiently precise that we can determine "the exact nature of the inquiry," *Opinion of the Justices*, 460 A.2d 1341, 1346 (Me. 1982), and we will not answer questions that are "tentative, hypothetical and abstract." *Opinion of the Justices*, 330 A.2d 912, 915 (Me. 1975).

Appendix Exhibit 4

OPINION OF THE JUSTICES

OF THE SUPREME JUDICIAL COURT

GIVEN UNDER THE PROVISIONS OF

ARTICLE VI, SECTION 3 OF THE MAINE CONSTITUTION

Docket No. OJ 04-01

I. SOLEMN OCCASION

[¶2] The Maine Constitution requires the justices of the Supreme Judicial Court to answer the questions propounded by the Senate and House if they are important questions of law and present a solemn occasion. Me. Const. art. VI, § 3. Because not all of the justices agree that a solemn occasion exists, the undersigned justices briefly explain why we conclude that this is a solemn occasion.

[¶3] A solemn occasion exists when the questions are of a serious and immediate nature, *Opinion of the Justices*, 2002 ME 169, ¶ 6, 815 A.2d 791, 794; and the situation presents an unusual exigency, as when the Senate and the House have serious doubts as to action they can take, *Opinion of the Justices*, 709 A.2d. 1183, 1185 (Me. 1997). These factors are present.

[¶4] There is no question that the concerns of the Senate and House are serious. Initiated Bill 4 makes a major structural change in the valuation of property for property tax purposes, and it is the property tax upon which municipalities rely for revenue.

[¶5] Immediacy and an unusual exigency are likewise present. The Legislature has a constitutional duty to make a decision regarding Initiated Bill 4. That is, it must enact the bill, propose a competing measure, or decide to take no action. Me. Const. art. IV, pt. 3, § 18, cl. 2. The Attorney General has given the Legislature an opinion that the valuation formula in Initiated Bill 4 is unconstitutional and that the severability provisions do not save the rest of the act. The Legislature has before it an immediate issue of whether to enact Initiated Bill 4 as written or propose a competing measure.[2] In light of these circumstances, we conclude that the requisite seriousness, immediacy and an unusual exigency exist.

Appendix Exhibit 5

3 Questions Propounded

On Friday, July 17, 2015, at 12:40 p.m., the Governor of the State of Maine, Paul R. LePage, submitted the following questions to the Justices of the Supreme Judicial Court pursuant to Article VI, Section 3 of the Maine Constitution:

What form of adjournment prevents the return of a bill to the Legislature as contemplated by the use of the word, adjournment, in Art. IV, pt. 3, §2 of the Maine Constitution?

Did any of the action or inaction by the Legislature trigger the constitutional three-day procedure for the exercise of the Governor's veto?

Are the 65 bills I returned to the Legislature on July 16 properly before that body for reconsideration?

http://www.courts.maine.gov/maine_courts/supreme/gov_question/

Article IV.
Part Third.
Legislative Power.

Appendix Exhibit 6

Section 2. Bills to be signed by the Governor; proceedings, in case the Governor disapproves; allowing the Governor 10 days to act on legislation. Every bill or resolution, having the force of law, to which the concurrence of both Houses may be necessary, [except on a question of adjournment, which shall have passed both Houses], shall be presented to the Governor, and if the Governor approves, the Governor shall sign it; if not, the Governor shall return it with objections to the House in which it shall have originated, which shall enter the objections at large on its journals, [and proceed to reconsider it.] [If after such reconsideration,] 2/3 of that House shall agree to pass it, it shall be sent together with the objections, to the other House, by which it shall be reconsidered, and, if approved by 2/3 of that House, it shall have the same effect as if it had been signed by the Governor; but in all such cases, the votes of both Houses shall be taken by yeas and nays, and the names of the persons, voting for and against the bill or resolution, shall be entered on the journals of both Houses respectively. If the bill or resolution shall not be returned by the Governor within 10 days (Sundays excepted) after it shall have been presented to the Governor, it shall have the same force and effect as if the Governor had signed it unless the Legislature by their adjournment prevent its return, in which case it shall have such force and effect, unless returned within 3 days after the next meeting of the same Legislature which enacted the bill or resolution; if there is no such next meeting of the Legislature which enacted the bill or resolution, the bill or resolution shall not be a law.

http://legislature.maine.gov/const/ConstitutionOfMaine2013-06-10.pdf

Appendix Exhibit 7 (2 Pages)

Some quotes from National Labor Relations Board v Noel Canning Ruling

(in sequential order in the Syllabus of the Ruling)

1. [Founding-era dictionaries and usages show that the phrase "the recess" can encompass intra-session breaks.]

2. [The Senate is equally away and unavailable to participate in the appointments process during both an inter-session and an intra-session recess. History offers further support for this interpretation. From the founding until the Great Depression, every time the Senate took a substantial, nonholiday intra-session recess, the President made recess appointments. President Andrew Johnson made the first documented intra-session recess appointments in 1867 and 1868, and Presidents madesimilar appointments in 1921 and 1929. Since 1929, and particularlysince the end of World War II, Congress has shortened its intersession breaks and taken longer and more frequent intra-session breaks; Presidents accordingly have made more intra-session recessappointments. Meanwhile, the Senate has never taken any formal action to deny the validity of intra-session recess appointments. In 1905, the Senate Judiciary Committee defined "the recess" as "the period of time when the Senate" is absent and cannot "participate as a body]

3. [.....and that functional definition encompasses both intrasession and inter-session recesses.]

4. [The Adjournments Clause, Art. I, §5, cl. 4, reflects the fact that a 3-day break is not a significant interruption of legislative business.]

5. [In light of historical practice, a recess of more than 3 days but less than 10 days is presumptively too short to fall withinthe Clause.]

6. [But the narrower interpretation risks undermining constitutionally conferred powers more seriously and more often.]

7. [The Adjournments Clause, Art. I, §5, cl. 4, reflects the fact that a 3-day break is not a significant interruption of legislative business.] and [In light of historical practice, a recess of more than 3 days but less than 10 days is presumptively too short to fall withinthe Clause. The word "presumptively" leaves open the possibility that a very unusual circumstance could demand the exercise of therecess-appointment power during a shorter break. Pp. 9–21.]

http://www.supremecourt.gov/opinions/13pdf/12-1281_mc8p.pdf

Appendix Exhibit 8

Statement (on record) from the Speaker of the House

"You cannot veto a law," House Speaker Mark Eves, D-North Berwick, said in a statement Thursday. "This legislation is already law, in accordance with the Constitution, history and precedent. The governor's veto attempts are out of order and in error. He missed the deadline to veto the bills."